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Signature DateType of paper transmitted: REPLY BRIEFApplicant's Name: David W. Koenig, et al.Serial No. (Control No.): 10/029,322 Examiner: ColeFiling Date: 12/20/01 Art Unit: 1771 Confirmation No.: 6145Application Title: PRODUCTS FOR CONTROLLING MICROBIAL GENERATED  
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: David W. Koenig, et al.      Art Unit: 1771  
Serial No.: 10/029,322  
Filed: December 20, 2001  
Confirmation No.: 6145  
For: PRODUCTS FOR CONTROLLING MICROBIAL GENERATED ODORS  
Examiner: Elizabeth M. Cole

April 7, 2005

REPLY BRIEF

This is a reply to the Examiner's Answer mailed  
March 11, 2005.

**Appellant's Comments on the Examiner's Response to Argument**

In response to Appellant's argument that when a term can reasonably be given two meanings and the specification does not provide a clear basis for selecting one, the narrower reading should be adopted, the Examiner's Response states that "this is not a case where a term can be given two alternate meanings." This statement is incorrect, and is in fact contradicted by the Examiner's own characterization of the issue.<sup>1</sup> The Examiner has taken the position that the phrase "wherein the sum of R1, R2 and R3 radicals is from 14 to 24 carbon atoms"<sup>2</sup> is merely a preferred embodiment. In contrast, as explained more fully in the Appeal Brief, the phrase "wherein the sum of R1, R2 and R3 radicals is from 14 to 24 carbon atoms" may reasonably be interpreted as a requirement of the betaine surfactants disclosed in Romano, et al. despite some inconsistent statements by Romano, et al. Since this phrase may be given two meanings, the narrower reading should be adopted, and the phrase "wherein the sum of R1, R2 and R3 radicals is from 14 to 24 carbon atoms" should be interpreted

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<sup>1</sup>The Examiner's Response, page 6, states, "In this case, the issue is whether or not a particular clause should be read as an absolute requirement of the disclosed compounds or if it denotes a preferred embodiment."

<sup>2</sup>Romano, et al., p. 8, ln. 14-15.

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as a positive limitation, that cannot be ignored.<sup>3</sup> The Examiner has cited no case law contradicting this position.

The Examiner's Response further states that the skilled artisan would immediately envisage glycine betaine from the disclosure of Romano, et al., since glycine betaine is the simplest of all the disclosed compounds. The simplicity of the structure of glycine betaine is irrelevant. One skilled in the art would not recognize Romano, et al. as teaching or suggesting the use of glycine betaine because, as discussed more fully in the Appeal Brief, the only specific examples of suitable betaine surfactants (i.e., coconut betaine and lauryl betaine) and the preferred R1 chain lengths provided by Romano, et al. are long-chained.<sup>4</sup> In contrast, glycine betaine is a short chained betaine (R1 equals 1 carbon atom). Furthermore, Romano, et al. do not merely disclose betaines, but betaine surfactants.<sup>5</sup> As will be recognized by one skilled in the art, surfactants are long-chained. One skilled in the art would thus recognize Romano, et al. as disclosing long-chained betaine surfactants, not short-chained glycine betaine.

### Conclusion

In addition to the reasons set forth in Appellant's Appeal Brief, the rejections of the claims on appeal are in error for the reasons set forth above. Therefore, appellants request that

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<sup>3</sup>See Appeal Brief, p. 11 and n.7-8.

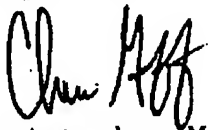
<sup>4</sup>See Romano, et al., p. 8, ln. 17-19. Romano, et al. also state that R1 is an alkyl radical containing preferably from 8 to 18 carbon atoms, and more preferably from 12 to 14 carbon atoms. *Id.* at ln. 9-10. Thus, the only preferred betaine surfactants are long-chained.

<sup>5</sup>"As a second essential ingredient, the compositions according to the present invention comprise a betaine or a sulphobetaine surfactant, or derivatives thereof or mixtures thereof." *Id.* at p. 7, ln. 13-15. Numerous other places throughout Romano, et al. disclose betaine surfactants. See, e.g., *id.* at p. 7, ln. 36-37 and p. 8, ln. 17-19 (describing preferred betaine surfactants).

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the Examiner's rejections of claims 1-6, 9-17, 20-23, 26-28, 31-35, and 38 be reversed. Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 19-1345.

Respectfully submitted,



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